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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY TYSON VANCIL,

Defendant and Appellant.

2d Crim. No. B290111
(Super. Ct. No. 15F-11114)
(San Luis Obispo County)

Gregory Tyson Vancil appeals his conviction, by jury, of transporting methamphetamine (Health & Saf. Code, § 11379, subd. (a)), possession for sale of methamphetamine (Health & Saf. Code, § 11378) and driving with a suspended license. (Veh. Code, § 14601.1, subd. (a).) The transportation and possession offenses relate to the same methamphetamine. The trial court sentenced appellant to one year on the transportation conviction and a consecutive term of eight months on the possession

conviction.¹ (Pen. Code, § 1170.1, subd. (a).)² Appellant contends the sentence violates Penal Code, section 654. Respondent concedes the error. We modify the judgment to reflect that the eight-month term on count 2 is stayed pursuant to section 654. In all other respects, we affirm.

Facts

Appellant was driving in San Luis Obispo County when he was stopped by a deputy sheriff for overly tinted windows. He was arrested after the deputy determined that he was driving with a suspended driver's license. Appellant admitted to the deputy that he had methamphetamine on his person. The deputy found 14.13 grams of methamphetamine in appellant's left front pocket, in a plastic bag. The same methamphetamine formed the basis for both the transportation and the possession for sale charge.

Discussion

Section 654 bars multiple punishment where a single act or indivisible course of criminal conduct is punishable under more than one statute. (*People v. Buchanan* (2016) 248 Cal.App.4th 603, 611.) This is such a situation. The deputy

¹ Appellant also pleaded no contest to several felonies in another case. (Super. Ct. San Luis Obispo County, No. 16F03883.) As part of the agreed disposition, one of the terms imposed was designated the principal term and each of the remaining terms, including those at issue here, were treated as subordinate terms. Thus, the one-year term imposed here for transporting methamphetamine represents one-third of the statutory mid-term for that offense. (Health & Saf. Code, § 11379, subd. (a).)

² All statutory references are to the Penal Code unless otherwise stated.

sheriff discovered appellant in a vehicle with an amount of methamphetamine evidencing possession for sale. The possession and the transportation occurred simultaneously. Consequently, the two offenses are not separately punishable. (*People v. Tinker* (2013) 212 Cal.App.4th 1502, 1506; *People v. Avalos* (1996) 47 Cal.App.4th 1569, 1583.) The trial court erred when it declined to stay the term imposed for possession.

Conclusion

We modify the judgment to reflect that the eight-month sentence imposed on count 2 of the information is stayed pursuant to section 654. The superior court clerk is directed to modify the abstract of judgment to so reflect and to forward a certified copy of the abstract of judgment to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

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YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Jacquelyn H. Duffy, Judge

Superior Court County of San Luis Obispo

Jolene Larimore, under appointment by the Court of
Appeal for Defendant and Appellant.

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